

**REMARKS**

Applicant has amended the specification and claims 1, 8, 13, 20, 25, and 32. New claims 64-83 are sought to be added. No new matter has been added by way of this amendment. In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

The Office has rejected claims 1, 3, 13, 15, 25, and 27 under 35 U.S.C. §112, first paragraph. With respect to claims 1, 13, and 25, the Office asserts the above-identified patent application does not specifically state that interrogating the client system is used to obtain the content presentation system. Additionally with respect to claims 3, 15, and 27, the Office asserts the above-identified patent application does not specifically state that determining two or more of a current content transfer rate for the client system.

Accordingly, with respect to claims 1, 13, and 25 Applicant has amended these claims to correspond with the language in the specification as set forth above. reconsideration and withdrawal of this rejection is respectfully requested. With respect to claims 3, 15, and 27, Applicant respectfully traverses this rejection. The Office's attention is respectfully directed to paragraph [0044] of the original specification, reproduced below (emphasis added):

[0044] At step 370, since the server 12 determines that the practical connection speed of the computer 14 over the network 16 does not exceed the high bandwidth threshold at step 355, the server 12 assigns the bandwidth variable a value indicating that the practical connection speed of the computer 14 does not exceed the high bandwidth threshold, such as "LOWBAND," and this value is stored in the server memory 22 for further processing as described herein, although other values may be used. It should be appreciated that the bandwidth variable may be associated with **any number of and different types of values** indicating the practical connection speed of the computer 14. This provides the ability to identify one of a plurality of ranges of connection speeds that the practical connection speed of the computer 14 corresponds to besides just the exemplary low and high bandwidth ranges used herein.

Therefore, it is clear the original specification of the above-identified patent application supports a plurality of ranges of connection speeds besides "two or more of a current content transfer rate of the client system," as recited by claims 3, 15, and 27. In view

of the foregoing amendments and remarks, the Office is respectfully requested to reconsider and withdraw this rejection..

The Office has rejected claims 1-2, 8, 10-14, 20, 22-26, 32, 34-36 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 2003/0110234 to Egli et al. (Egli) in view of U.S. Patent No. 6,003,065 to Yan et al. (Yan), claims 3-6, 15-18, and 27-30 under 35 U.S.C. §103(a) as allegedly being unpatentable over Egli in view of Yan in view of U.S. Patent No. 6,256,669 to Hurwitz (Hurwitz) and in further view of U.S. Patent No. 6,072,787 to Hamalainen et al. (Hamalainen), and claims 7, 9, 19, 21, 31, and 33 under 35 U.S.C. §103(a) as allegedly being unpatentable over Egli in view of Yan and in further view of U.S. Patent Application Publication No. 2005/0015551 to Eames et al. (Eames).

Regarding independent claims 1, 13, and 25, the Office asserts that Egli discloses a system for providing content to a client system, the system comprising ([0058], lines 4-7): an assessment system that obtains content presentation environment information associated with the client system ([0066], lines 1-4, [0068], lines 17-20), wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluation system ([0058], lines 7-12); and a content processing system that selects one of a plurality of versions of the content to send the client system using the obtained content presentation environment information ([0060], lines 1-6) but does not clearly disclose interrogating the client system to obtain the content presentation system. The Office also asserts that in the same field of endeavor, Yan discloses interrogating the client system to obtain the content presentation system (col. 14, lines 50-67, col. 15, lines 1-10), and therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli with the teachings of Yan in order to determine what the capabilities of the device are directly (col. 14, lines 50-67, col. 15, lines 1-10).

Regarding claim 2, the Office asserts Egli discloses wherein the obtained content presentation environment information comprises a first identifier for a content presentation application associated with the client system ([0069], lines 1-11) and a second identifier for a content transfer rate associated with the client system ([0102], lines 1-7, [0103], lines 5-8, client capabilities are defined inside the content-type tag by one or more capability tags).

Egli, Yan, Hamalainen, and Eames, alone or in combination, do not disclose or suggest, “an assessment system that obtains from the client system, content presentation environment information associated with the client system, wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluation system to obtain, from the client system, the content presentation environment information at a time of request for the content from the client system,” as now recited by amended claim 1, or “determining from the client system, content presentation environment information associated with the client system, wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluation system at a time of a request for the content from the client system,” as now recited by amended claims 13 and 25.

As noted above, the Office has asserted paragraphs [0066] and [0068] of Egli disclose the above-noted limitation of claims 1, 13, and 25. Applicant respectfully disagrees with the Office’s assertions. In the cited portions describing FIG. 3, Egli discloses, an online media delivery system 320, external to and separate from the client device(s) 301 and server 330. The online media delivery system 320 comprises a client capabilities module (CCM) 322 coupled to a local device capabilities data store 324 and a CCM log 323. When a request for media content is received from a client device 301, the CCM 322 polls the data store 324, and not the client device, to search for and obtain previously stored information related to client device 301. Such information relates to screen resolution, screen color depth, whether images should be rotated to fit on the device’s screen, and other similar information. If device capabilities information is not found, then the CCM 322 at most logs the requesting client device 301 in the CCM log 323, so as to obtain, at a later time, missing information, which may be used for a future request from such an omitted device (*see*, paragraph [0069]).

This is contrastingly different from the Applicant’s claimed invention where “an assessment system that obtains from the client system content presentation environment information associated with the client system . . . at a time of request for the content from the client system,” as claimed by claim 1 (emphasis added), or “determining from the client system content presentation environment information associated with the client system, . . . at a time of a request for the content from the client system,” as recited by claims 13 and 25 (emphasis added). Neither Egli’s server 330 nor online media delivery system 320 (comprising CCM 322 and datastore 324) disclose or suggest obtaining any of the claimed

information from the client device(s) 301 itself at the time of request made by the client device. For example, Applicant's claimed invention obtains the device information, for example, from a cookie file stored on the client system (*see*, paragraph [0032] of the patent application). Thus, Egli fails to disclose or suggest the above-noted limitations of claims 1, 13, and 25.

As noted above, Yan is being asserted to allegedly disclose or suggest interrogating the client system to obtain the content presentation system information. In the portions of Yan cited by the Office, Yan discloses Application Programming Interfaces (APIs) for changing operating characteristics of a peripheral device without knowing specific information about the peripheral device (*see*, col. 14, lines 62-64 and col. 15, lines 2-3). However, Yan's peripheral device is not the Applicant's client system, but is instead connected to a host computer. For example, in col. 6, line 56, Yan notes:

Computer network 100 includes at least one host computer system such as a host computer 102A coupled to one or more peripheral devices such as a printer 102B, an image capture device such as a camera 102C, a telecommunication device such as a telephone 102D, an image display device such as an HDTV television 102E, an image input device such as a scanner 102F, and a sound generator device such as a stereo 102G. (Emphasis added).

In contrast, Applicant in paragraph [0004] of the patent application notes, for example:

Streaming video has become so common that most client machines, such as personal computers, have one or more streaming video players already installed when purchased from a retailer. (emphasis added)

Thus, clearly the Office's characterization of Yan's peripheral device to be Applicant's claimed client system performing the claimed actions is incorrect. In addition, assuming for argument's sake that the peripheral device(s) in Yan is in fact the claimed client system, then such a peripheral device is not requesting any content from other device(s) but is simply receives content for printing or displaying. Thus, despite disclosing a peripheral device connected to a computer, neither in the cited portions nor elsewhere, Yan simply fails to disclose or suggest "an assessment system that obtains from the client system content presentation environment information associated with the client system . . . at a time of

request for the content from the client system,” as claimed by claim 1 (emphasis added), or “determining from the client system content presentation environment information associated with the client system, . . . at a time of a request for the content from the client system,” as recited by claims 13 and 25 (emphasis added). Therefore, Yan fails to remove the above-noted deficiencies of Egli. Similarly, Hurwitz, Hamalainen, and Eames, taken alone or in combination fail to disclose or suggest the above-noted features of claims 1, 13, and 25 and do not render them obvious.

In view of the foregoing remarks, the Office is respectfully requested to reconsider and withdraw this rejection of claims 1, 13, and 25. Since claims 2-12 depend from and contain the limitations of claim 1, claims 14-24 depend from and contain the limitations of claim 13, and claims 26-36 depend from and contain the limitations of claim 25, they are distinguishable over the cited references and patentable in the same manner as claims 1, 13, and 25.

Further, as noted above with respect to claim 2, the Office asserts Egli discloses wherein the obtained content presentation environment information comprises a first identifier for a content presentation application associated with the client system ([0069], lines 1-11) and a second identifier for a content transfer rate associated with the client system ([0102], lines 1-7, [0103], lines 5-8, client capabilities are defined inside the content-type tag by one or more capability tags).

Applicant respectfully disagrees with the Office’s assertions. Egli does not disclose or suggest “wherein the obtained content presentation environment information comprises a first identifier for a content presentation application associated with the client system,” as recited in claim 2. Egli’s first identifier is either assumed (paragraph [0103], lines 1-3) or identified from HTTP headers (paragraph [0095]), and is an indicator of information regarding screen resolution, screen color depth, and other physical characteristics of the client system’s display unit. However, Egli’s first identifier is not associated with a “content presentation application,” as recited in claim 2 (emphasis added). An example of Applicant’s content presentation application is QuickTime® video player application, as described in paragraph [0048] of this patent application. Egli is silent with respect to obtaining environment information comprising a first identifier associated with such a content presentation application. Thus, Egli fails to disclose or suggest this limitation of claim 2.

Regarding claims 7, 9, 19, 21, 31, and 33, as noted in a previous reply filed on 09/03/2008, Applicant respectfully traverses the rejection because Eames is not prior art with respect to the above-identified patent application. The above-identified patent application claims priority to US Provisional Patent Application Serial No. 60/455,601 filed on March 19, 2003, which is several months before the July 18, 2003 filing date of the Eames reference. Accordingly, in view of the foregoing amendments and remarks, the Office is respectfully requested to reconsider and withdraw the rejection of claim 7, 9, 19, 21, 31, and 33.

Additionally, new dependent claims 64-83 are believed to be distinguishable over the prior art of record and in condition for allowance. A notice to this effect is respectfully requested.

In view of all of the foregoing, Applicant submits that this case is in condition for allowance and such allowance is earnestly solicited

Respectfully submitted,

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